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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/699,570	10/30/2003	Kiyoshi Miyazaki	51435/DBP/A400	1588

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EXAMINER
PARA, ANNETTE H

ART UNIT	PAPER NUMBER
1661	

DATE MAILED: 04/05/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/699,570	MIYAZAKI ET AL.	
	Examiner	Art Unit	
	Annette H. Para	1661	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on _____.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed..
- 6) Claim(s) 1 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 30 October 2003 is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ . |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ . | 6) <input type="checkbox"/> Other: _____ . |

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DETAILED ACTION

Drawings

The drawings are objected because they are not in compliance with the new rules.

The rules for submitting drawings, 37 CFR 1.84 and 37 CFR 1.165, were amended effective November 29, 2000. The USPTO has delayed enforcement of these changes until October 1, 2001. Complete details can be found in the May 22, 2001 *Official Gazette* or on the internet at <http://www.uspto.gov/web/offices/com/sol/og/2001/week21/patwavr.htm>.

Objection to the Disclosure 37 CFR 1.163

The following is a quotation of section (a) of 37 CFR 1.163:

(a) The specification must contain as full and complete a disclosure as possible of the plant and the characteristics thereof that distinguish the same over related known varieties, and its antecedents, and must particularly point out where and in what manner the variety of plant has been asexually reproduced. In the case of a newly found plant, the specification must particularly point out the location and character of the area where the plant was discovered.

35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

In plant applications filed under 35 U.S.C. 161, the requirements of 35 U.S.C. are limited. The following is a quotation of 35 U.S.C. 162:

No plant patent shall be declared invalid for noncompliance with section 112 of this title if the description is as complete as is reasonably possible. The claim in the specification shall be in formal terms to the plant shown and described.

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The disclosure is objected to under 37 CFR 1.163 (a) and under 35 U.S.C. 112, first paragraph, because the specification presents less than a full, clear and complete botanical description of the plant and the characteristics which define same per se and which distinguish the plant from related known cultivars and antecedents.

More specifically:

- A. Page 2, line 9, the recitation "Omi R & D Center, Suntory Flowers Ltd." should be deleted as such constitutes unwarranted advertising. Place of business can be cited only to point out the location where the observed plant has been discovered or asexually reproduced. MPEP 1610. Correction is required.
- B. The disclosure is objected to under 37 CFR 1.163(a) because the specification does not particularly point out the location and character of the area where the plant was discovered and asexually reproduced. Correction is required.
- C. On page 2 the name of the color chart is misspelled it should be " The Royal Horticultural Society Colour Chart". Correction is required.
- D. In the interest of providing as complete a botanical description as is reasonably possible applicants should set forth the description of petal size (length, width), shape, and margin. Correction is required.
- E. In the interest of providing as complete a botanical description as is reasonably possible applicants should set forth the description of petiole length, width, and diameter. Correction is required.
- F. In the interest of providing as complete a botanical description as is reasonably possible applicants should set forth the description of sepal size, shape, and margin. Correction is required.

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G. In the interest of providing as complete a botanical description as is reasonably possible applicants should set forth the description of peduncle size and texture. Correction is required.

H. On page 3, line 33, page 5, line 11, page 6, line 21, page 7, line 31, and page 9, line 26 it is unclear what applicant meant by "shape of petal **chip**". Clarification is required.

I. On page 3, line 35, page 5, line 13, page 6, line 23, page 7, line 33, and page 9, line 28 it is unclear what the applicant meant by "waving of petal". Clarification is required.

J. On page 3, line 29, page 5, line 10, page 6, line 22, page 7, line 32, and page 9, line 27 it is unclear what the applicant meant by "waving of petal". Clarification is required.

K. On page 9, line 23, it is unclear what a "Slantly upward facing direction" is? Clarification is required.

L. On page 10, lines 2-4 applicant should define what is the hardiness of the plant for cold and heat, and to which disease and pest the plant is resistant. Correction is required.

The above listing may not be complete. Applicants should carefully compare the claimed plant with the botanical descriptions set forth in the specification to ensure completeness and accuracy and to distinguish the plant within this expanding market class. Any further botanical information should be imported into the specification, as should any additional or corrected information relative to same.

Claim Rejection

35 USC § 112, 1st and 2nd Paragraphs

Claim 1 is rejected under 35 U.S.C. 112, first and second paragraphs as not being supported by a clear and complete botanical description of the plant for reasons set forth in the Objection to the Disclosure Section above.

Information

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Future Correspondence

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Annette H. Para whose telephone number is (571) 272-0982. The Examiner can normally be reached Monday through Thursday from 5:30 am to 4:00 pm.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Bruce Campell, can be reached on (571) 272-0994. The fax numbers for the group is (703) 872-9306. The Technology Center phone number is (571) 272-1600. Any inquiry of a general nature or relating to the status of this application should be directed to the Matrix Customer Service Center whose telephone number is (703) 872-9305.



ANNE MARIE GRUNBERG
PRIMARY EXAMINER